affirmation

Ontario Human Rights Commission

Volume 9, Number 1
March 1988

Published quarterly by the Ontario Human Rights Commission

Pay Equity at last

The *Pay Equity Act* of Ontario came into effect on January 1, 1988.

The proclamation announcement in the November 3rd throne speech reinforced the government's commitment to narrowing the wage gap through more equitable pay practices.

In keeping with the Act, employers will be required to compare the value of the jobs done predominantly by women in their organizations with those done predominantly by men. Where jobs are found to be comparable in value and pay inequities are found to exist, wage increases will be required for workers in predominantly female jobs. Value will be based on the skill, effort, responsibility and working conditions required for the job.

The achievement of pay equity will be phased in over time. The Ontario public service and other public sector organizations such as hospitals and schools will be first, followed by the large then smaller private sector organizations. Employers with fewer than 10 employees are exempt from the legislation.

The first step will involve the development and posting of pay equity plans by employers. (Developing and posting a plan is voluntary for private sector firms with 10-99 employees and posting dates apply if a plan is developed.)

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Ice time for Blainey

An independent board of inquiry has ruled that Justine Blainey was treated unequally and discriminated against because of her sex when she was declared ineligible to play on an all-male hockey team, the Etobicoke Canucks. Justine, who was 13 at the time, had been successful at a tryout and was offered a position on the team. The team is affiliated with the Metropolitan Toronto Hockey League (MTHL), which is a member of the Ontario Hockey Association (OHA). OHA policy required females to play on female teams, except when they are under 12 and there is no local Ontario Women's Hockey Association team on which they can play.

Section 1 of the *Human Rights Code, 1981* provides the right to freedom from discrimination in services, goods and facilities because of sex. However, amateur athletics were excepted from this provision of section 19(2) at the time of Justine's complaint.

Justine applied to the courts for a declaration that section 19(2) of the Code was contrary to the equality rights provisions of the Canadian Charter of Rights and Freedoms, and the Ontario Court of Appeal upheld the challenge.

Section 19(2) has since been repealed, and the board of inquiry ruled that discrimination on the basis of sex in athletic activities is now unlawful in Ontario, unless such activities are special programs (affirmative action), which are permissible under the Code.

The board therefore held that the program offered by the Ontario Women's Hockey Association (OWHA) qualifies as a special program since it is designed to assist

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AMC stops drug testing

A complaint initiated by the Ontario Human Rights Commission against American Motors (Canada) Inc. regarding the company's practice of requiring applicants for jobs in its new Bramalea plant to undergo testing for the use of illegal drugs has been resolved.

A representative of Chrysler explained that this program had been implemented at the former American Motors plant prior to the merger with Chrysler in August 1987. Chrysler does not currently utilize a drug testing program at any of its assembly plants in the province, and the decision will now bring hiring practices at the Bramalea plant into line with those at other Chrysler plant locations.

American Motors had not accepted the position taken by the commission that the drug testing program amounted to discrimination against handicapped persons. However, the discontinuance of the drug testing program by AMC formed the basis

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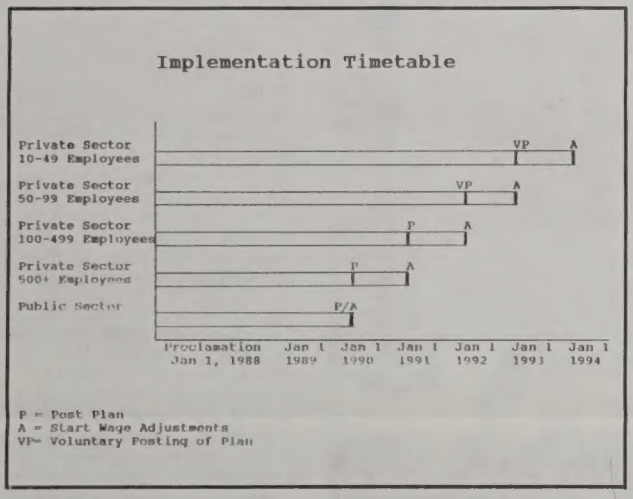
Next, all employers will start making any necessary wage adjustments.

Employers and employees will be provided with information from the Pay Equity Commission to help them achieve pay equity.

Introducing the commissioner

On September 29, 1987 Premier David Peterson appointed George Podrebarac as commissioner of the Pay Equity Commission. The commissioner will oversee the administration of the Act and related public education and conciliation services.

In a recent interview with Dr. Podrebarac, he discussed the role and activities of the new commission.



What is the major role of the Pay Equity Commission?

G.P. From my point of view, the major role of the commission is education. Our job is to provide clarity and assistance to all parties to help them achieve pay equity in their own organizations. The Act is clear and emphasizes that implementation of pay equity is a partnership between the employer and employees. As such, I foresee minimal commission involvement. In the event a settlement between these parties cannot be reached, however, the commission will help resolve complaints. Let's not lose sight of our objective — that is the achievement of pay equity.

How will the Pay Equity Commission be organized?

G.P. The Pay Equity Commission is comprised of a Pay Equity Office and a Pay Equity Hearings Tribunal.

The Pay Equity Office will be responsible for three areas: research and policy issues; education and information; and review services dealing with the resolution of complaints. As commissioner, I am directly responsible for the Pay Equity Office.

The Pay Equity Hearings Tribunal is a decision-making body that reports directly to the Cabinet of Ontario. It will provide an opportunity for independent hearings in cases where agreements cannot be reached by the Pay Equity Office. I am responsible for ensuring that the tribunal has the administrative support it requires to do its job effectively.

The Government indicated that the commission would make recommendations concerning the coverage of employees such as day care workers in all-female establishments where no male job comparison is available. What, in this regard, is being done?

G.P. The commission will soon be initiating this study. It will form the basis for a report and recommendations, which will be made to the Minister of Labour by no later than January 1, 1989.

What information will employers and employees receive to help them implement pay equity?

G.P. The Pay Equity Commission will be providing related guidelines, information bulletins and other publications. It will also make staff available to conduct workshops and seminars. We will focus on ensuring that employers know what to expect and what is expected of them. We will also be directing information to employees and bargaining agents so that they know their rights and responsibilities under the Act.

Will the Commission be endorsing any particular job comparison method?

G.P. No. Employers and employees can develop or select their own methods. We require only that methods chosen be applied in a gender-neutral way, in other words, not biased in favour of male or female jobs. As well, any method must also measure at least skill, effort, responsibility and working conditions. There is nothing in the legislation to prevent the use of additional factors in the comparison of jobs.

What could employers be doing?

G.P. Employers should, if they have not already done so, review the Act, assess or audit their current work force situation and start to develop ways of communicating the pay equity issue to their employees.

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Policy on drug testing established

by D'Arcy Hoobin

In the last year, the issue of drug testing in the workplace has attracted much attention. The issue raises a number of difficult questions dealing with such matters as the individual's right to privacy, the reliability of testing procedures and safety on the job. The Human Rights Commission has published a policy concerning the implications of drug and alcohol testing under the *Human Rights Code*. The policy is a guideline for employers, employees and other interested individuals who wish to know under what circumstances testing by employers for drug or alcohol use may amount to a breach of the Code.

The Code provides protection against discrimination in employment on the basis of handicap. The definition of the term 'handicap' in the Code is a broad one that includes both physical and mental handicaps. The commission's policy states that a person who is dependent on drugs or alcohol has a handicap under the Code. As with any other handicap, an employer must make reasonable allowances for individuals suffering from drug or alcohol dependence. What might those allowances be? It might mean enrolling the individual in an employee assistance program, allowing the individual time off from work to seek medical treatment for the problem or transferring the individual to a job that he/she can perform safely. The goal is to assist the individual who has a handicap rather than punish that person.

The policy addresses the issue of when an employer may test for drug or alcohol use without being in violation of the Code. The employer must be able to show that such testing is necessary because of the type of job involved. There are hazardous jobs in which an accident could have terrible consequences. In such jobs, the commission recognizes the danger posed by the use of drugs or alcohol.

Another factor to be considered is whether there is reason to believe that an individual has a problem with drugs or alcohol. Is the person constantly late for work? Has the person shown signs of drug or alcohol use while at work? An employer must be able to show the reason why a particular individual was asked to take a drug or alcohol test. Simply selecting individuals at random to be tested is not good enough.

Finally, is the person's performance on the job being affected by drug or alcohol use? This might mean, for example, a drop in the person's usual productivity. Once again, the employer must show why a particular individual is being asked to take a drug or alcohol test.

Another frequently asked question is whether an employer can ask job applicants to undergo a drug or alcohol test. In that situation, the employer must show that such a test is necessary because of the nature of the job for which the applicant is applying. In addition, the employer must make a written job offer to the applicant before the test and explain that this offer is conditional on a medical examination that may include testing for drugs or alcohol. If an applicant is found to have a handicap based on drug or alcohol dependence, the employer would have to make reasonable allowances for the handicap. For example, the employer may hold the job open for the applicant for a period of time while the applicant undergoes medical treatment for the problem.

It should be emphasized that an employer must not use drug or alcohol testing as a way of checking for other medical conditions. For example, an employer is not allowed to use a urine or blood sample taken for the purpose of drug or alcohol testing to determine if an individual has epilepsy. The blood or urine sample must be analysed only for the purpose for which it was taken — detecting the use of drugs or alcohol.

It is very important that strict confidentiality of drug and alcohol testing results be maintained. The commission's policy states that all such results should be kept separately with the employer's medical department or physician. This information should not be kept in the individual's employment file.

Nothing in the commission's policy on drug and alcohol testing should be interpreted as support for criminal activity. If an employer discovers the sale or use of illegal drugs in the workplace, the employer can deal with that problem in the same way as any other criminal activity.

The commission hopes that its policy on drug and alcohol testing will shed some light on a difficult and controversial issue. Individuals who would like a copy of the policy should contact the Ontario Human Rights Commission at 400 University Avenue (12th Floor), Toronto, M7A 1T7.

D'Arcy Hoobin serves as legal counsel with the Ontario Human Rights Commission.

Unions and working women

by Julie Davis

The first Canadian women unionized were members of the Knights of Labour, an industrial union based in the United States. The Knights, in Canada, were affiliated with the Trades and Labour Congress (TLC) and sent their first woman delegate to a TLC convention in 1886. Women were also active in locals of the United Garment Workers before 1900 in London and Winnipeg and were also organized in the Tobacco and Bookbinding Industry.

In July 1910 the Waitresses Union was formed and it was an active participant in the Vancouver Trade and Labour Council. In March 1913 the Home and Domestic Employees Union of British Columbia was formed. This group comprised governesses, housemaids, nursemaids and other domestic workers. Their aims were ambitious. They wanted a nine-hour day, a minimum wage and recognition as a body of industrial workers. In January 1914 the British Columbia Federation of Labour passed a resolution endorsing the Domestic Employees Union and demanding that any eight-hour law that was enacted include domestic employees in its scope. Unfortunately, in Ontario, that same struggle for rights for domestic workers still continues.

During the 1920s the number of women in the labour force increased as they were accepted into jobs as office workers, nurses, retail and the public service. Throughout the '20s, the question of minimum wages became a lively issue. The TLC supported the minimum wage for women because they needed 'protection', but opposed the same for men. However, the All-Canadian Congress of Labour (ACCL), a national union central of the time, rejected this position and favoured a minimum wage for all workers.

During this period women were also busy campaigning for the right to vote. Surprisingly, the first Canadian women to vote were in Quebec during the years 1809 to 1834. The *Constitutional Act* of 1791 had set property qualifications for voting, so that, while women were not technically denied, only widows and spinsters were able to exercise the right. But, in 1834, more conservative voices reigned and the law was changed so that 'no women could vote'. In Quebec this ban on women voting would continue until 1940. In the rest of the country, and here in Ontario, women had the right to vote 20 years earlier in 1920.

It was women's participation in the labour force that eventually gave them the vote. The recognition of their work and war contribution was the final push in the fight for the vote.

The end of the Great Depression brought with it the rise of the Congress of Industrial Unions and a commitment to organizing. During this period women started to be recognized by the labour movement as leaders.

Eileen Tallman Sufrin of the Steelworkers Union organized the first bank strike in 1941 and went on to become one of the most active organizers of her time. Elma Hannah organized telephone workers in Saskatchewan and eventually became an international representative for the Communication Workers of America. The Canadian Congress of Labour — the forerunner of the CLC — appointed Louise Larade as an organizer for the Maritimes in 1942. Mable Mayne became president of the Oshawa Labour Council in 1948, the first woman to hold such a position.

With this increased activity of women in the post-war years came an awareness of the many problems women were faced with. As they took on larger and larger social, political and economic struggles, the more they saw the injustices against them.

Equal pay for equal work was interpreted very narrowly and did nothing to address the problems of job ghettos and lack of opportunities for women. Unions were beginning to tackle the question of separate seniority lists for men and women, but little was being said about the subtle discrimination in fringe benefits, particularly in pension plans and parental leave.

Equal pay for work of equal value still requires tough legislation, but the statistics show that the wage gap between the earnings of unionized men and women is much smaller than the wage gap between men and women in non-organized workplaces. Supplementary benefits for maternity leave are now a reality for many women, and some breakthroughs have been made in the area of child care. Many contracts now clearly provide for protection from sexual harassment in the workplace, and union constitutions are being amended to provide for similar protection at union conferences and conventions.

Organizing of part-time workers — the vast majority of whom are women — is also high on the list for many unions.

Inside our unions, major changes have also taken place as women's percentage of union membership has increased from 16.7 per cent in 1964 to over 38 per cent today.

Educational programs have been designed to develop an awareness of issues of concern to women — to provide skills-building so that women will have the confidence and skills to fully participate in working life.

Most of the major unions hold women's issues conferences, as do both the OFL and the CLC, and there are women's committees locally, provincially and nationally. At the local union level more women are moving into leadership positions and more men are speaking out on issues like child care and equal pay.

Keeping warm while fighting for their rights.

At the level of the central labour bodies, we have, of course, the OFL Affirmative Action Measure, which was the first of its kind in North America and which has since become the model for the provincial and federal NDP, the CLC and all provincial federations of labour in this country.

Nevertheless, we are still faced with the challenge of continuing to strive for a society where women have an unquestioned right to be in the workplace, with salaries based on the equal value of their work, with a system of quality child care, with paid parental leave and fully negotiated affirmative action programs that address all women and, in particular, racial minorities, immigrant women and native women.

Julie Davis, Executive Vice-President of the Ontario Federation of Labour, was keynote speaker at the 1987 Metro Toronto Labour Council's International Women's Day Brunch. This article is based on Ms. Davis's address, which provided an overview of the gains women are making both through, and in, their unions.

New frontiers in human rights for mentally handicapped persons

by Catherine Frazee

What is extraordinary about Resolution 15 is not its content. It calls for an end to 'systemic infliction of physical pain, physical and/or emotional trauma; dehumanization of the individual; ...social degradation, social isolation, verbal abuse, electric shock ...and noxious stimulation.'

What is extraordianry is the context of Resolution No. 15. It is extraordinary because Resolution No. 15 is not, as it might appear, an indictment of the torture of Prisoners of Conscience in nations where horror and oppression rule. Resolution No. 15 is here and now.

What is extraordinary — even alarming — is that Resolution No. 15 was passed by the Canadian Association for Community Living, at its November Annual General Meeting, in response to treatment methods currently in common use as therapy designed for perhaps the single most sensitive and vulnerable citizens of our society — that is, persons with profound mental handicaps.

'Those who serve persons with a mental handicap and severe behavioural problems often, and non-critically, resort to grotesque forms of punishment that in any other situation would be regarded as barbaric and torturous.' So notes Dr. John McGee, an author/educator with special expertise in serving children and adults with severe behavioural problems.

In the preface to his most recent book, *Gentle Teaching — A Non-Aversive Approach to Helping Persons with Mental Retardation*, McGee reinforces a principle well understood by human rights advocates around the globe: 'If we punish one person, we punish all; if we start to create justice for one, we start to create it for all.'

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Pregnant women protected

by Yan Lazor

In Ontario any doubt that discrimination because of pregnancy constitutes discrimination on the basis of sex has been dispelled by subsection 9(2) of the Code, which states that the right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. This provision came into effect in December 1986 with the passage of the *Equality Rights Statute Law Amendment Act, 1986*, more commonly known as Bill 7.

In five Canadian jurisdictions, Quebec, Ontario, Saskatchewan, the Yukon Territory and the federal jurisdiction, which is governed by the *Canadian Human Rights Act*, discrimination on the basis of pregnancy is prohibited. In all of these jurisdictions save Quebec, pregnancy is not considered an individual ground, but rather is subsumed by the ground of sex.

With respect to those cases where the act of discrimination took place before the amendment came into force, the commission continues to be of the view that the ground of sex covers pregnancy discrimination. In this regard, it has the support of a number of decisions of boards of inquiry.

The coming into force of subsection 9(2) of the Code has raised questions concerning how this subsection will impact on the pregnancy leave provisions of the *Employment Standards Act*. The Act provides that no employer shall terminate the employment of, or lay off, an employee who is entitled to a leave of absence under the Act. Under the Act a pregnant employee who has been employed for a period of at least twelve months and eleven weeks immediately preceding the estimated day of her delivery is entitled to a seventeen-week leave of absence.

Although it should be emphasized that the meaning of subsection 9(2) of the Code has not yet been considered at a board of inquiry hearing or in a court proceeding, it is the commission's view that subsection 9(2) of the Code enlarges the pregnancy leave provisions contained in the *Employment Standards Act*.

One question that needs to be addressed is whether an employer may set a policy with respect to a minimum length of service requirement for entitlement to pregnancy leave? In the commission's view it would appear that such a policy would be in violation of the Code. The protection in subsection 4(1) against discrimination on the basis of sex, including pregnancy, is not limited by a time requirement. An employer cannot assert a broad right to discriminate on the basis of sex within a certain time period in the employment relationship.

It is also the commission's view that an employer cannot force an employee to go on a pregnancy leave of absence before the date of delivery unless the employer can demonstrate that it is reasonable and bona fide to do so in the circumstances. For example, it may be reasonable and bona fide to require an employee to go on a pregnancy leave of absence where the job involves heavy physical exertion. The employer would also have to demonstrate that the employee cannot be accommodated without causing undue hardship on the employer.

More information on this topic can be obtained by contacting the Human Rights Office in your area.

Yan Lazor serves as legal counsel with the Ontario Human Rights Commission.

New frontiers
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McGee recently facilitated a two-day workshop co-sponsored by several community organizations representing mentally handicapped persons. Theme for this workshop was 'Positive Options for Responding to Challenging Behaviour'. The Ontario Human Rights Commission participated at the event in a panel discussion on the moral, legal and ethical implications of aversive techniques in behavioural therapy.

Our jurisdiction in this area would come under section 1 of the Code, which outlines the right to equal treatment with respect to services, goods and facilities. This concept of equal treatment was carefully considered in the recent Hickling, Horbay and Legris Board of Inquiry decision. This decision is currently before the Court of Appeal. In this case, Chairman Bernard Adell cited 'the right to be treated with the same respect and concern as anyone else' in his finding that three mentally handicapped complainants had the right to a Roman Catholic education.

Where there is a right, there is a corresponding duty. Care givers, treatment facilities and funding agencies serving the needs of mentally handicapped persons must stop at nothing short of undue hardship in the effort to provide appropriate therapy, continuity of care, and opportunities to participate in community life.

Traditional aversive treatment methods, if challenged in human rights complaints, will be investigated in the context of such alternatives as the 'Gentle Teaching' practised by Dr. McGee.

Resolution No. 15 comes with a wave of controversy in the domain of behavioural medicine. The application of human rights legislation to the issue of treatment methods has yet to be tested. Whatever the circumstances of individual case situations, however, our response will flow from the preamble of the *Human Rights Code*, which affirms that 'it is public policy in Ontario to recognize the dignity and worth of every person.'

Catherine Frazee is an Ontario Human Rights commissioner.

HIV testing—yes or no?

In light of recent concerns expressed over the issue of AIDS, *Affirmation* is reprinting this letter from *The Globe and Mail* as it responds to many questions.

The Editor
The Toronto Globe and Mail
444 Front St. W.
Toronto, Ontario

Dear Sir:

I am writing on behalf of the Ontario Public Education Panel on AIDS in response to the article that appeared November 4th on HIV testing in private schools.

We would like to congratulate Upper Canada College on its reasoned and sensible position on HIV testing and to express our disappointment and frustration with the position taken by a number of other schools quoted in the article. We are deeply concerned about the message that these schools are giving students, parents and members of the general public.

By their actions, they suggest that testing will protect us from AIDS, and this is not the case. The test identifies antibodies to the AIDS virus. When someone is infected with the virus, he or she may take from six weeks to six months or longer to develop detectable antibodies. People can test negative when, in fact, they are infected and infectious. If we rely on test results rather than individual responsibility for behaviour, we may give our young people a false sense of security. Confident that everyone in their 'environment' is 'safe', they may take unnecessary and irresponsible risks.

Testing cannot guarantee that people won't become infected in the future. A person may test negative today, but if he or she then engages in risk behaviour — such as having unprotected sexual intercourse or sharing a needle with someone who is infected — infection may occur. Are schools then going to test every three months — like some social or dating clubs — or are they going to teach their students to make responsible decisions and protect themselves?

Testing in schools begs the question: What will happen to a student who tests positive? Will that student be expelled or isolated? If so, why? There is an immense body of knowledge about AIDS and how it is spread. It is clear from that evidence that a person with AIDS poses no risk to others in a school or work environment. The virus is not spread by touching, hugging, kissing, sharing food or showers or clothes or telephones. It is spread by sexual intercourse and sharing needles. Any attempt to exclude a student on the basis of a positive test for the AIDS virus is a violation of the *Ontario Human Rights Code*. School policies that in any way compromise an individual's right to confidentiality are a direct violation of the *Health Protection and Promotion Act*. Such policies also fly directly in the face of the factual, scientific information about AIDS, which causes students, parents and the public to distrust the information they receive from scientists and health professionals — instead of using that information to protect themselves.

We would expect that, of all institutions in our society, schools would take the lead in promoting education as a means of preventing the spread of AIDS. Educators should be encouraging in their students the values of listening to and acting on rational, scientific advice from medical and scientific authorities. There is no quick, technological 'fix' for AIDS. We are going to have to learn to live with AIDS — in our communities, our workplaces and our schools — and the way in which we respond will be a measure of our society.

Testing will not prevent the spread of AIDS and it will not protect our children. Education will. Our children must learn the facts about AIDS and then reflect that knowledge in the individual decisions they make about their behaviour. Schools have a vital role to play in this education, and they should not undermine it with foolish, misguided policies on testing.

We would encourage all schools — both public and private — to develop rational policies on how they will deal with AIDS education and with AIDS cases in the schools. If they require assistance in developing such a policy, they should contact the Ontario Public Education Panel on AIDS: (416) 965-2168 or 1-800-268-6066.

Yours sincerely,
Dr. J.A. Browne
Chairman
The Ontario Public Education Panel on AIDS

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Woman fired after notice of pregnancy

The complainant had been employed as a computer trainer at the respondent company for a month when she became pregnant. She alleged that when she advised her employer of this, he terminated her services on the grounds that it would not be in the company's best interests to train her when her maternity leave was due to begin in seven months. He added that although the complainant intended to return to work after her leave, she would likely experience problems in locating baby sitters or daycare. She filed a complaint alleging discrimination in employment because of sex, which includes pregnancy under the Code.

After the fact finding conference, the parties negotiated a settlement of the complaint. The complainant received $2,500 in compensation for mental anguish and the employer advised all staff of the company's non-discriminatory policy.

Affirmation/Published quarterly by:
The Ontario Human Rights Commission

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ISSN 0228-5800

Editorial

With this issue of our publication, we are joining with others in celebrating International Women's Day.

We are doing it with a renewed sense of commitment to eliminate sex discrimination and to promote full equality. In order to gain our objectives, our struggle must go on.

This declaration encompasses some of the recent developments in this area in our province, as featured in this issue.

We are proud to bring to our readers the decision of a board of inquiry in the case of Justine Blainey, and the coming into effect of Pay Equity legislation that will undoubtedly change the climate surrounding the determination of inequalities built into the system of wage levels for working women.

Some of this signal has already been picked up by the industrial relations community and is reflected in a recently concluded settlement of an agreement between a major union and a municipality. It points the way for the future.

We are also featuring the Drug and Alcohol Testing policy recently adopted by the Ontario Human Rights Commission, which assisted in producing a precedent-setting settlement in the case of American Motors division of Chrysler Canada, and may become an important guideline for others in the future.

We are pleased to welcome our newly appointed Chief Commissioner, Mr. Raj Anand, whose term of office has already begun to guide our endeavours, particularly in our quest to eliminate systemic discrimination and conduct a broadened outreach program. In his statement upon assuming office, Mr. Anand stated that he views his role...'as an advocate for the rights of minority groups, the handicapped, and women...'

We wish to assure him of our full support and co-operation in his task.

We also say farewell to Mr. George Brown, who, after 16 years of stewardship as our executive director, resigned to accept a major research post with the University of Toronto's Faculty of Social Work. We express our sincerest appreciation and gratitude for his service, and wish him well for the future.

Mail bag

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Canada.

It is with deep appreciation and gratitude that I write to thank you on behalf of my family and myself for the tremendous effort made by you through the auspices of the federal, provincial government and Ontario Human Rights Commission, on my behalf in pursuing a settlement with Foster Wheeler Limited. Moments like these bring out a very deep pride in being a Canadian citizen and especially a resident of Ontario.

It proved to be a very long and painful experience for my family and I. I wish to thank the Ontario Human Rights Commission, especially Mr. Michael Bader, Mr. Len Marino, Mr. George Brown and Ms. Anita Dahlin for the brilliant work that was executed by them.

The Ontario Human Rights Commission is a fundamental and intricate part of our multicultural society, and it is vital for the survival of the community at large.

Without the Human Rights Commission cases such as mine would have found no place in the conventional justice system. The precedent that was set will ensure that all Canadians within our multicultural community will be assured that their dignity, human rights, and access to employment offered both within our country and overseas will be protected.

On behalf of all the many callers that have congratulated me on my success I in turn would like to direct those many congratulations to you and your organizations to whom it is due. I pray that you may continue your good work.

I am sincerely,
G. Leslie Scott

Editor's Note: The federal government had no involvement in Mr. Scott's case.

Chief Commissioner

By way of introduction, we are reprinting exerpts of a statement made by Raj Anand, Chief Commissioner of the Ontario Human Rights Commission at a news conference held to announce his appointment on December 10, 1987.

At a news conference held to announce his appointment on December 10, 1987.

Ladies and gentlemen, I am pleased to be here this afternoon to answer your questions and to make a brief statement regarding my intentions and priorities as Chief Commissioner.

First of all, I look forward to an open and cordial relationship with all of the news media.

Second, I want to highlight the measures announced by the government today to enhance the independence of the Ontario Human Rights Commission. The *Human Rights Code* has been characterized by the Supreme Court of Canada as quasi-constitutional in its importance. Accordingly, its vigorous and autonomous enforcement must be, and must be seen to be, independent of the government of the day.

Unmistakably, I view the role of Chief Commissioner as an advocate for the rights of minority groups, the handicapped and women, which are enshrined in the *Human Rights Code*.

My first priority as Chief Commissioner will be to improve the procedures for the resolution of human rights complaints and to expedite the settlement or adjudication of the ever-expanding caseload. Consistent and fair procedures, and the elimination of undue delays in the handling of complaints, are vital to the interests of all the commission's constituencies: those who appear as complainants, respondent groups such as employers, Housing Authorities and government, and the public generally.

I propose to address these goals in the area of case handling through measures such as the following:

— increased staffing in the investigation and conciliation functions of the commission;

— formal separation of the investigation and conciliation functions so as to eliminate confusion and perceived unfairness;

— development and publication of guidelines outlining the procedures to be followed by the commission staff, complainants and respondents;

— improved staff training and development to meet the challenges posed by new procedures and the increasing complexities of human rights legislation and jurisprudence.

In addition to compliance, the Human Rights Commission has a number of other important functions. In these areas I propose to set up various units within the commission to:

— ensure consistent and regular communication with the commission's constituencies, the public and the media;

— co-ordinate public information and education programs and materials;

— conduct studies and compile statistics to assist in developing operational and managerial policy;

— review existing laws, including the Code, to identify the need for reform and assist the commission in advocating legislative change;

— identify and investigate systemic discrimination, pursuant to the government's undertaking in its April 23, 1987 throne speech;

— provide independent legal and administrative support.

— beginning on January 1, 1988, I intend to move ahead to meet these challenges in a spirit of commitment, fairness and co-operation. I look forward to working with all of the commission's constituencies, as well as its staff and OPSEU.

Thank you.

Ice Time

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females, a disadvantaged group where opportunities to play hockey are concerned.

During the hearing the board heard the evidence of medical experts and athletes, who testified that, prior to reaching puberty, the average girl can compete successfully in contact sports with pre-pubescent boys of the same age. At age 14 or 15, however, males become heavier and stronger, and, on average, enjoy a competitive advantage over females in such sports. There is still considerable overlap between the sexes, with some post-pubescent female athletes being able to compete successfully against their male counterparts.

The board ordered that Justine be given an opportunity to try out for a team of her choice and receive a position if she qualifies.

The OHA, MTHL and OWHA were ordered not to interfere with Justine's right to compete for and be awarded a position equally with males. The OHA and MTHL were barred from restricting in any way the participation of females in hockey on an integrated basis.

The board further ordered that the OWHA be declared an affirmative action program as defined by the Code to enable the organization to limit eligibility to females.

All OHA, MTHL and OWHA public offices in Ontario must display posters provided by the Ontario Human Rights Commission affirming their policy of non-discrimination.

Minority access to trades and professions probed

by Georges Tremblay

A broad range of trades and professions in Ontario have the power, given by the government, to govern themselves in an effort to advance and protect the public interest.

However, there have been indications over the years that most foreign-trained professionals and tradespersons prevented from practising their professions in Ontario are members of ethnic and racial minorities. The Ontario Human Rights Commission has received many complaints from foreign-trained professionals over the failure of various self-governing bodies to recognize their credentials, and has pursued over 50 such cases.

In September 1986 cabinet agreed that a two-phase study be undertaken. The first phase was to identify those requirements for entry into professions or trades that have an adverse impact upon racial or ethnic minorities; the second phase would comprise a close examination, in consultation with the affected professions and trades, of those requirements and their justifications, and the extent to which they might be modified to meet legitimate concerns.

The Report on Access to Trades and Professions in Ontario was submitted to the Cabinet Committee on Race Relations in May 1987. Prepared by Abt Associates of Canada, the report concluded that entry requirements have a disproportionate impact on racial and ethnic minority groups, and that systemic barriers are administrative, economic and cultural in origin.

After reviewing the report, the Cabinet Committee on Race Relations agreed to establish a three-person task force to conduct a more detailed second-phase study. York University law professor Peter Cumming was appointed chairman. Enid Lee, an educator with the North York Board of Education, and Dr. Dimitrious Oreopoulos, a kidney expert affiliated with Toronto Western Hospital and a professor of medicine at the University of Toronto, were also named to the task force. Also, resources for a project director, director of research, researchers and consultants were allocated.

Patricia Bregman, project director for the task force, is justifiably proud of what has been accomplished so far. A six-person research team has been assembled, with backgrounds in law, anthropology, psychology, women's studies, and public policy as well as policy analysis. The researchers are responsible for contacting licensing bodies and associations to determine what criteria and processes are being used with respect to the assessment of foreign qualifications so that the task force can assess the fairness of the existent procedures.

The task force will also review more general issues affecting a foreign-trained individual's ability to have those credentials recognized, including English-language training, standards used to evaluate foreign academic credentials, as well as on-the-job training and apprenticeships obtained in other countries.

'The work is just incredibly challenging,' says Patricia. 'So far, we've solicited briefs and submissions from members of the public as well as from professional and trade organizations, government bodies, educational institutions and community groups. Our advertisement appeared in 41 newspapers across Ontario. We also had a direct mail campaign in which over 2,000 organizations, associations and community groups were contacted by letter.'

The task force is scheduled to submit its report by November 1988.

Georges Tremblay is bilingual communications consultant with the Race Relations Directorate.

LEAF promotes equality for women

by Susan Tamar Joanis

The Women's Legal Education and Action Fund (LEAF) is part of a continuum of Canadian women's active involvement in the development and interpretation of Constitutional equality guarantees. Women lobbied hard for equality protections that would be clear and strong; they carefully studied provincial and federal laws for compliance with the equality provisions; and they established an organization designed specifically to conduct strategic constitutional litigation to promote equality for women — LEAF.

LEAF officially began on April 17, 1985, the same day that the Charter's section 15 equality guarantees came into force. By the next day, LEAF had already launched its first two cases — one for Sheila Baudette, challenging Ontario's infamous 'spouse-in-the-house' rule, whereby single mothers routinely lost their welfare benefits because welfare authorities assumed that the women's male friends were supporting them and their children. The second LEAF case was brought on behalf of Suzanne Bertrand, a francophone woman in Whitehorse, who could not use her birth name because of legislation requiring married women to use their husbands' surnames as long as the husband was alive.

The Whitehorse case became just one in a series of LEAF actions across the country challenging various provincial laws that restricted women's options for naming themselves and their children. These laws represented the few remaining instances of direct and undisguised discrimination against women.

LEAF has been successful in securing out-of-court settlements and legislative change to answer the concerns raised in all of these cases. This series of LEAF cases demonstrated early on that the new Charter could indeed be counted on to make a difference in the struggle for women's equality.

During its second year LEAF has become increasingly involved with highly complex cases of *indirect* discrimination against women. These are cases in which laws or policies appear to be gender-neutral, but, in fact, have a particularly adverse impact on women. Examples of these include LEAF's challenge to *Employment Standards Act* provisions that deny domestic workers minimum pay and overtime protections and a planned challenge to the federal language training program that subsidizes only those immigrants who are 'labour-destined' and excludes 'sponsored' immigrants. Neither of these programs single women out explicitly for adverse treatment, yet certain realities lead to precisely that result. The group called 'domestic workers' is made up almost entirely of women; sponsored immigrants are also primarily women, and the government's procedures for determining who is 'labour-destined' shows a bias against women.

LEAF has found that preparation of such cases involves extremely time-consuming efforts to gather statistical data that will clearly show the adverse effect that a particular law or policy has on women. Such statistics are often difficult to find because data concerning women frequently have not been collected. One very positive aspect of these cases is that they have enabled LEAF to work closely with community groups that represent the women affected, for example, INTERCEDE and the Centre for Spanish-speaking peoples.

Another unanticipated challenge that LEAF is working to meet is posed by the rash of Charter challenges brought by men who attack legislation that was designed specifically to protect women and by cases involving sex equality issues that are already working their way through the courts. LEAF's response has been to intervene in a number of cases at different court levels in order to make sex equality arguments. LEAF's intervention program began slowly in its second year with interventions in the B.C. and Ontario Courts of Appeal. This strategy has blossomed in the first half of LEAF's third year with five interventions scheduled in the Supreme Court of Canada. The cases raise issues of major importance for women, such as whether or not pregnancy discrimination and sexual harassment are included in prohibitions against sex discrimination, the validity of legal abortions and the appropriate application and interpretation of s.15 itself. These cases have provided LEAF with the opportunity to develop and articulate more fully its theory of substantive equality.

LEAF expects to continue to be challenged in a variety of ways as it continues to work toward true equality for all Canadian women.

Susan Tamar Joanis serves as research lawyer with the Women's Legal Education and Action Fund.

Drug testing
continued from page 1

for a resolution of the complaint. The results of the drug testing program shall play no part in future recruitment by American Motors (Canada) Inc.

For a more detailed account of the commission's policy on drug and alcohol testing, please see the article on page 2 of this issue.

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Worker laid off after notice of surgery

In a unanimous decision, the Divisional Court upheld the finding made by a board of inquiry, established under the *Human Rights Code*, that the Liquor Control Board had discriminated against Alexander Karumanchiri, Eric Ng and Joseph Yan on the basis of race, colour, ancestry, place of origin and ethnic origin in the awarding of two promotions in its laboratory services. The board had found that the complainants were better qualified than another candidate who had been successful in receiving a promotion, first to the position of assistant chief chemist, and subsequently, to the post of director of Laboratory Services.

Of particular significance in this case is that aspect of the board decision that ordered that Mr. Karumanchiri be placed in the position of director of Laboratory Services. In upholding the order of the board to place Mr. Karumanchiri in the position he had originally been denied, the court stated, 'the provisions of the Code should be accorded a broad and liberal interpretation in order to, as far as possible, remedy the effects of or prevent discrimination.'

The court also upheld the board's finding that Messrs. Ng and Yan were subjected to reprisal as a result of filing complaints against the LCBO.